IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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Civil Revision No. 2275 of 2004

Date of decision : 29.11.2006.

Kitab Devi ... Petitioner

Versus

Vijay Singh and another ... Respondents.

...

Present: Mr. Ashish Sanghi,Advocate
for the petitioner.

Mr. Mukesh Mittal,Advocate
for the respondents.

...

VINOD K. SHARMA, J

By way of present revision petition, the petitioner has challenged the order dated 6.3.2004 passed by the learned Additional Civil Judge (Senior Division), Rewari, allowing an application moved by the respondent to lead secondary evidence.

The case set up by the respondent was that the respondents have relied upon the compromise deed dated 19.8.1996 which was in custody of the attesting witness, Shri Ishwar Singh. The said witness was summoned with original compromise but in view of the collusion of the said witness with the plaintiff, he did not produce the original compromise deed. He even denied his signatures on the photocopy of the said compromise which was placed on record along with the written statement filed by the respondent. The said application was challenged by the petitioner primarily on the plea that existence and loss of alleged compromise deed was not proved on record and, therefore, the application could not be allowed.

The learned trial Court came to the conclusion that the said compromise deed was relied upon by the respondents at the first instance while filing written statement and existence thereof was denied by the plaintiff-petitioner. It was also claimed that the said compromise deed was in possession of Ishwar Singh. It was also observed that the respondents were not in a position to produce the document in view of the collusion of Ishwar Singh with the plaintiff. The learned trial Court placed reliance on the judgment of this Court in the case of **Raj Kumari** verus **Lal Chand**, 1994 (1) Civil Court Cases 477 wherein this Court had been pleased to hold that a party would be entitled to secondary evidence if the document cannot be found in case either a party loses possession thereof or denies execution of the said document. The learned trial Court has further relied upon the judgment of this Court in **Ishwar Singh** versus **Hazi Mohd., Askin and others,** 1990 Civil Court Cases 489 wherein it has been held that production of secondary evidence is different from evidentiary value to be attached to the proposed secondary evidence - The general rule is to permit the evidence to be led rather than to shut out evidence.

The judgments cited above squarely cover the case of the respondent and, therefore, the learned trial Court was right in allowing the application for leading secondary evidence. It may be noticed that this Court in the case of **Mukhtiar Singh** versus **Bant Singh and another**, 1991 Civil Court Cases 225 has been pleased to hold that where photocopy of family partition is produced and the secondary evidence is allowed, there is no infirmity in the order which can call for interference in the exercise of revisional jurisdiction.

In view of what has been stated above, there is no merit in the present revision petition which is accordingly dismissed.

(VINOD K. SHARMA)
JUDGE

November 29, 2006
RS